

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANICE R. SIZEMORE**

Claimant

VS.

**BOEING COMPANY**

Respondent

AND

**KEMPER INSURANCE COMPANY**

Insurance Carrier

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Docket No. 1,003,329

**ORDER**

Claimant appeals the November 6, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant's request for temporary total disability payments and a change of treating physician was denied. Paul S. Stein, M.D., was noted as the authorized treating physician. Claimant requested benefits after arguing that claimant's ongoing neck problems, including the spinal stenosis diagnosed, occurred as a result of the work-related injury suffered by claimant in the spring of 2002. Respondent contends that claimant's ongoing cervical problems relate back to a September 2000 non-work-related neck condition suffered by claimant, which led to surgery in 2001.

**ISSUES**

Is the medical treatment being requested by claimant the result of a work-related injury which arose out of and in the course of claimant's employment with respondent?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a long-term employee of respondent, began developing headaches and neck pain in September of 2000. There was no traumatic incident identified by claimant causing these pain complaints. Claimant sought medical treatment with physician Glen R. Patton, D.O., who treated claimant with osteopathic manipulation, which resulted in an increase in claimant's pain. After a period of conservative treatment, claimant was referred for a CT scan of the brain, which, in November of 2000, was read as normal, and a cervical MRI in January of 2001, which identified herniations at C5-6 and C6-7.

Claimant was referred to neurosurgeon Eustaquio O. Abay, M.D., and in April 2001, Dr. Abay performed an anterior discectomy with interbody fusion with plating at C5-6 and C6-7. Although claimant was somewhat improved after the surgery, after returning to work, she developed ongoing problems in her neck and upper extremities, including headaches, neck pain and radiculopathy bilaterally into her arms. Claimant was returned to work for respondent with limitations. She continued working for respondent into the spring of 2002, at which time she described an onset of right shoulder discomfort. She again returned to Dr. Abay, who, after testing, determined no additional surgery was warranted as, in his opinion, the fusion was solid.

Claimant was referred to neurosurgeon Paul S. Stein, M.D., for an examination and evaluation. Dr. Stein, in December of 2002, diagnosed claimant with probable myofascial pain syndrome and apparent cervical stenosis. He found claimant also to suffer cervical disc disease post C5-6, C6-7 discectomy.

In March of 2003, claimant was referred to Philip R. Mills, M.D., board certified as an independent medical examiner and in physical medicine and rehabilitation. Dr. Mills diagnosed cervical disc disease post C5-6, C6-7 discectomy and fusion; and myofascial pain syndrome. Dr. Mills opined that claimant's degenerative disc disease "may have" been aggravated by her work. However, he stated that the myofascial pain syndrome was multifactorial and the cause was unknown.

Claimant was also referred on more than one occasion for an evaluation to Michael H. Munhall, M.D. Dr. Munhall, who is board certified in physical medicine and rehabilitation and also an independent medical examiner, found claimant to be post C5-6, C6-7 anterior discectomy, foraminotomy, and arthrodesis. He also diagnosed claimant with chronic pain syndrome in the cervical spine and bilaterally in the upper extremities. He diagnosed myofascial pain syndrome, right middle rhomboids; and ulnar nerve irritation in left elbow. In his April 22, 2003 report, Dr. Munhall found a causal relationship between claimant's diagnoses and the injuries she suffered in March 2002 and every working day thereafter. Dr. Munhall did not separate his causation opinion between the chronic pain syndrome, myofascial pain syndrome and post-surgical cervical spine.

On November 4, 2003, Dr. Stein, after reviewing the medical records of Dr. Abay, found post-operative changes in claimant's C5 through C7 cervical spine. Dr. Stein also

diagnosed stenosis, or narrowing of the spinal canal, at those same levels. He noted that a cervical myelogram performed in August of 2001 did not show the stenosis.

Dr. Stein was asked whether claimant's new diagnosis of cervical spinal stenosis was related to the spring 2002 work-related injury suffered by claimant. Dr. Stein testified that the ongoing stenosis was related to the cervical injury suffered by claimant, which led to her April 2001 surgery under Dr. Abay. Dr. Stein went on to state that if the April 2001 surgical procedure was the result of work activities and/or injuries, then the new diagnosis of cervical stenosis would also be work related. However, he stated that if the first cervical fusion performed by Dr. Abay was not work related, then claimant's ongoing aggravation would also not be work related. Dr. Stein stated claimant's current symptomatology "is simply a continuation of that which caused her surgery in April of 2001." He acknowledged that claimant's complaints increased after her return to work and that there may have been a myofascial aggravation from claimant's activities, but this aggravation did not result in the structural change to claimant's cervical spine, did not cause the stenosis and did not require additional surgery. In his opinion, the additional surgery was related to the same factors which led to the original procedure, which, in this instance, was non-work related.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup> In this instance, Dr. Stein, who has had the opportunity to examine claimant on multiple occasions over a period of time, has determined that claimant's ongoing stenosis is related specifically to the cervical surgery performed by Dr. Abay in April of 2001. Without a connection between this 2001 surgery and claimant's work, the Board cannot find that claimant's ongoing current cervical stenosis is related to her work-related injuries in the spring of 2002. The Board, therefore, finds that the Order of the Administrative Law Judge denying claimant temporary total disability compensation and a change of treating physician is affirmed, as claimant has not proven by a preponderance of the credible evidence that her ongoing symptoms are related to any work-related condition suffered in her employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated November 6, 2003, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

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<sup>1</sup> K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

Dated this \_\_\_\_ day of January 2004.

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Anne Haught, Acting Workers Compensation Director